



HOUSE OF REPRESENTATIVES

SB 1374

behavioral health examiners board

Sponsors: Senators Barto, Driggs, Lopez, et al.

DPA Committee on Health

X Caucus and COW

House Engrossed

OVERVIEW

SB 1374 continues the Arizona Board of Behavioral Health Examiners (Board) for four years and makes a variety of changes to the Board's statutes related to licensing, Board membership, duties of the Director, eliminates Credentialing Committees and establishes Academic Review Committees (ARCs).

HISTORY

Laws 1998, Chapter 313 established the eight member Board with the mission to establish and maintain standards of qualifications and performance for the four categories of licensed behavioral health professionals. *Counselors* work with individuals, families and groups to treat mental, behavioral and emotional problems and disorders. *Marriage and Family Therapists* diagnose and treat mental and emotional disorders within the context of marriage, couples and family systems. *Social Workers* counsel individuals, families and communities and provide social service assistance through various organizations such as schools and public social agencies. *Substance Abuse Counselors* counsel individuals and families on addiction, prevention, treatment, recovery support and education.

The Board accomplishes its mission by regulating the practice of licensed behavioral health professionals for the protection of the public. This is accomplished by licensing behavioral health professionals, investigating and resolving complaints and disciplining violators.

On November 13, 2012 the House Employment and Regulatory Affairs and the Senate Healthcare and Medical Liability Reform Committee of Reference met to conduct a sunset review of the Board and recommended that the Board be continued for 4 years until July 1, 2017.

PROVISIONS

Board Composition Powers and Duties *(Effective from and after October 1, 2015)*

- Modifies the composition of the Board to include the following professionals:
 - Two members who are licensed in social work with at least one whom is licensed in clinical social work.
 - Two members who are licensed in counseling with at least one whom is a licensed professional counselor.
 - Two members who are licensed in marriage and family therapy with at least one whom is a licensed marriage and family therapist.
 - Two members who are licensed in substance abuse counseling with at least one of whom is a licensed independent substance abuse counselor.

- Specifies that four public members must:
 - Not be licensed or eligible for licensure unless the public member has been retired from active practice for at least five years.
 - Not currently have a substantial financial interest in an entity that directly provides behavioral health services.
 - Not have a household member who is licensed or eligible for licensure pursuant to this chapter unless the household member has been retired from active practice for at least five years.
- Allows Board members to receive compensation of not more than \$85 for each day of service.
- States that each Board member must complete a 12 hour training program that emphasizes responsibilities and administrative management, licensure, judicial processes and temperament within one year after appointment to the Board.
- Requires the Board to issue a license by *endorsement* rather than *reciprocity*.
- Provides that if the Board employs an investigator, the investigator must complete a nationally recognized investigator training program within one year after the date of hire. Until the investigator completes the training program, the investigator must work under the supervision of an investigator that has completed the training.
- Specifies that the Board must adopt rules regarding the application for an approval of educational curricula of regionally accredited colleges or universities with a program not otherwise accredited by an organization or entity recognized by the Board that are consistent with the requirements of this chapter and maintain a list of those programs.
- States approvals must be valid for a period of five years provided no changes of curricula are made that are inconsistent with the requirements of this Chapter or Board rule.
- Requires the Board to maintain a registry of licensees who have met the educational requirements to provide supervision as required pursuant to this chapter to applicants in the same profession.
- Mandates that the Board adopt rules to allow approval of persons who wish to provide supervision and who are not licensed by the Board or who are licensed in a profession other than the profession in which the applicant is seeking licensure.
- Allows the Board to require the Executive Director to make periodic reports concerning complaints dismissed or agreements entered into.
- Requires, rather than allows, the Board to establish a confidential program for the monitoring of licensees who are chemically dependent or who have medical, psychiatric, psychological or behavioral health disorders that may impact their ability to safely practice, and the licensee must be responsible for the costs associated with rehabilitative services and monitoring.
- Requires the Board to audio record all meetings and maintain all audio and video recordings or stenographic records of interviews and meetings for a period of three years from the date the record was created.
- States that current Board members must continue to serve until their terms expire.

Executive Director Duties

- Requires the Board to appoint an Executive Director to serve at the pleasure of the Board and the Executive Director is eligible to receive compensation as set by the Board within specified parameters.
- Requires the Executive Director to:
 - Perform administrative duties of the Board.
 - Employ professional consultants and agents as necessary to conduct investigations.
 - Dismiss a complaint if there is no evidence substantiating the complaint or after conducting an investigation, there is insufficient evidence that the regulated party violated this Chapter or a rule.
 - If authorized by the Board, enter into stipulated agreements with a licensee for the confidential treatment, rehabilitation and monitoring of chemical dependency or medical, psychiatric, psychological or behavioral health disorders. A licensee who fails to comply with a program requirement must be reported to the Board and terminated from the confidential program. Any records of a licensee who is terminated from a confidential program are no longer confidential or exempt from the public records law.
 - States that stipulated agreements, notwithstanding any law to the contrary, are not public records if the following conditions are met:
 - The licensee voluntarily agrees to participate in the confidential program.
 - The licensee complies with all treatment requirements or recommendations, including participating in approved programs.
 - The licensee refrains from professional practice until the return to practice has been approved by the treatment program and the Executive Director or the Executive Director's designee.
 - The licensee complies with all monitoring requirements of the stipulated agreement, including random bodily fluid tests.
 - The licensee's professional employer is notified of the licensee's chemical dependency or medical, psychiatric, psychological or behavioral health disorders and participation in the confidential program is provided a copy of the stipulated agreement.

Academic Review Committees/Credentialing Committees
(Effective from and after October 31, 2015)

- Changes the heading title of *Professional Credentialing Committees* to *Academic Review Committees*.
- Eliminates all references to Credentialing Committees.
- Contains a delayed repeal of Arizona Revised Statutes §§ 32-3261 and 3262 and adds a new §32-3261 entitled Academic Review Committees; Appointment; Qualifications; Terms; Compensation; Immunity.
- Allows the Board to establish an ARC for each professional area to do the following:
 - Review applications referred to the ARC by the Board or the Executive Director to determine if an applicant:
 - Whose curriculum has not been approved or whose program is not accredited by an organization or entity approved by the Board, has met the educational requirements of this Chapter or Board rules.

- Has met the requirements of work supervision required for licensure pursuant to this Chapter or Board rules.
- Make specific findings concerning an applicant's deficiencies and make recommendations to the Board regarding the manner in which the deficiencies can be addressed.
- Review requests and make recommendations to the Board for curriculum approval applications.
- At the request of the Board, make recommendations regarding examinations.
- Requires an ARC to be composed of three members who have been residents of this state for at least one year before appointment, at least one but not more than two of whom are licensed pursuant to this Chapter and has five years of experience in the applicable profession. At least one but not more than two members must have served within the previous 10 years as core or full-time faculty at a regionally accredited college or university in a program related to the applicable profession.
- Provides that ARC members serve at the pleasure of the Board for terms of three years, with a limitation of two full consecutive terms.
- States the Board must stagger the terms of the members.
- Permits ARC members to receive compensation of not more than \$85 for each eight hours actually spent in the performance of their duties.
- Requires the ARC to annually elect a chairman and secretary from their membership.
- Specifies that ARC members are personally immune from suit with respect to all acts done and actions taken in good faith and in furtherance of the purposes of this Chapter.

Fees/Licensing

- Allows the Board by rule to adopt fees for applications for approval of educational curricula.
- Requires the Board to establish the same renewal dates for licensees who hold two or more licenses and the Board may prorate any fees due as necessary to synchronize the dates effective from and after October 31, 2015.
- Removes *reciprocal licenses* and replaces it with *licenses by endorsement*.
- Allows the Board to issue a license by endorsement when the person has been licensed or certified in the discipline applied for and at the same practice level as determined by the Board for a minimum of *three years* rather than *five years*.
- Permits the Board to issue a license by endorsement if the person is licensed or certified by the regulatory agency of one or more states at an equivalent or higher practice level as determined by the Board and the person meets all of the following:
 - The person was engaged in the practice of behavioral health in one or more states issuing the license or certification used by the person to qualify for a license by endorsement for a minimum of 3,600 hours in a period of not more than five years prior to applying for licensure by endorsement. The 3,600 hours must be in the discipline and at least in the practice level for which the person is applying.
 - The person submits to the Board a notarized affidavit listing every jurisdiction in the United States in which the person has been licensed or certified in the practice of behavioral health and any disciplinary action taken by any regulatory agency or any instance in which a license has been surrendered in lieu of discipline.

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- Specifies that in addition to the practice requirements, a person seeking licensure by endorsement for the following practice levels must have earned a master's or higher degree in the applicable field of practice granted by a regionally accredited college or university:
 - Licensed clinical social worker.
 - Licensed professional counselor.
 - Licensed marriage and family therapist.
 - Licensed independent substance abuse counselor.
- States that except for licenses by endorsement issued in the practice levels noted above, a person issued a license must practice behavioral health only under the direct supervision of a licensee.
- Provides that an applicant for licensure must not have committed any act or engaged in any conduct that would constitute grounds for disciplinary action against a licensee pursuant to this Chapter unless the applicant has corrected the conduct and resolved the matter to the Board's satisfaction.
- Allows an applicant for licensure to withdraw the application before a final action by the Board provided that the Board has not sent the applicant notification that the Board has initiated an investigation concerning professional misconduct.
- Specifies, following a notification, the applicant may request that the Board determine whether the request to withdraw the application has been made to avoid denial of a license as a result of unprofessional conduct.
- Permits the Executive Director to agree to a withdrawal when delegated that authority by the Board.

Disciplinary Actions

- Provides that the Board, for complaints related to conduct that are inconsistent with professional standards or ethics, scope of practice or standard of care, may consult with one or more licensed or retired behavioral health professionals of the same profession as the licensee to review complaints and make recommendations to the Board.
- Requires a licensee, on determination of reasonable cause by the Board, at their own expense, to undergo any combination of mental, physical, psychological examinations, assessments or skills evaluations necessary to determine the licensee's competence or ability to safely engage in the practice of behavioral health.
- Allows a licensee to file a written response with the Board within 30 days after receiving a letter of concern.
- Provides for a seven year statute of limitations for unprofessional conduct allegations or any other violation of the Chapter and states the seven year limitation does not apply to malpractice settlement or judgments.
- States the Board must not open an investigation if identifying information regarding the complainant is not provided.
- Provides that except for disciplinary matters relating to sexual conduct between a licensee and a client or former client, the Board has the burden of proof by clear and convincing evidence.

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- Requires the Board to make an investigation file available to the licensee or the licensee's designated representative who is subject to an investigation at least five business days before a Board meeting at which the Board considers a complaint.
- Allows the Board to redact any confidential information before releasing the file to the licensee.

Licensing Qualifications/Social Worker
(Effective from and after October 31, 2015)

- Makes conforming changes to the statutes for licensed baccalaureate social workers and licensed master social workers.
- Specifies for licensed clinical social workers, the person must have 3,200 hours of post master's degree experience in not less than 24 months under supervision that meets the requirements prescribed by the Board by rule.
- States that the 3,200 hours must include at least 1,600 hours of direct client contact with not more than 400 hours in psychoeducation, not more than 1,600 hours of indirect client service and at least 100 hours of clinical supervision as prescribed by the Board by rule.

Licensing Qualification/Licensed Professional Counselor
(Effective from and after October 31, 2015)

- Provides that the applicant for licensure must furnish documentation as prescribed by the Board by rule, that the person has completed a master's or higher degree with a major emphasis in counseling from a regionally accredited college or university in a program of study that includes at least 60 semester credit hours or 90 quarter credit hours and meets specified Board requirements.
- Specifies that a program not accredited by the Council for the Accreditation of Counseling and related educational programs or the National Council on Rehabilitation Education must include 700 hours of supervised clinical hours and 24 semester hours or 32 quarter hours in courses in the following eight core content areas as prescribed by the Board by rule:
 - Professional orientation and ethical practice.
 - Social and cultural diversity.
 - Human growth and development.
 - Career development.
 - Helping relationships.
 - Group work.
 - Assessment.
 - Research and program evaluation.
- States that the credit hours noted above must be in studies that provide a broad understanding in counseling related subject.
- Allows the Board to accept equivalent coursework in which the core content area subject matter is embedded or contained within another course, including another subject matter.
- Provides that an applicant for licensure must have received at least 3,200 hours in at least 24 months in post-master's degree work experience in the practice of professional counseling under supervision that meets the requirements prescribed by the Board by rule.

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- Specifies that the 3,200 hours must include at least 1,600 hours of direct client contact, not more than 1,600 hours of indirect client service and at least 100 hours of clinical supervision as prescribed by the Board by rule.
- Limits direct client contact hours to not more than 400 hours in psychoeducation.
- Makes technical changes to the licensed associate counselor statutes.

Licensing Qualification/Marriage and Family Therapist
(Effective from and after October 31, 2015)

- Provides that a person who wishes to be licensed as a marriage and family therapist must have completed 3,200 hours of post-master's degree experience in the practice of marriage and family therapy under supervision that meets the requirements prescribed by the Board by rule, including at least 1,600 hours of clinical experience with couples and families, at least 1,600 hours of direct client contact and not more than 1,600 hours of indirect client contact.
- Limits the direct client contact hours to not more than 400 psychoeducation hours.

Licensing Qualification/Substance Abuse Counseling
(Effective from and after October 31, 2015)

- Provides a person who wishes to be licensed to engage in the practice of substance abuse counseling as a *substance abuse technician* must present documentation as prescribed by the Board by rule that the person has an associate degree in chemical dependency or substance abuse with an emphasis on counseling that meets Board requirements.
- Specifies that a person who wishes to be licensed as an *associate substance abuse counselor* must present evidence to the Board that the person has a bachelor's degree in a behavioral science with an emphasis on counseling that meets the requirements of the Board and present documentation that the applicant has received at least 3,200 hours of work experience in substance abuse counseling under supervision that meets Board requirements.
- States that the 3,200 hours must include a minimum of 1,600 hours of direct client contact and not more than 1,600 hours of indirect client contact.
- Limits the direct client contact hours to not more than 400 psychoeducation hours.
- Provides that a person who wishes to be licensed as an *independent substance abuse counselor* must have received a master's degree or higher in a behavioral science with an emphasis on counseling in a program that is approved by the Board or that meets the requirements of the Board.
- Requires work experience of 3,200 hours of which 1,600 hours must include direct client contact and not more than 1,600 hours of indirect client service.
- Limits the direct client contact hours to not more than 400 hours in psychoeducation.

Board Continuation

- Repeals A.R.S. §41-3013.11.
- Continues the Board for four years until July, 1, 2017.
- Contains a purpose section.
- Retroactive to July 1, 2013.

Board Application Factors

- Notwithstanding licensure requirements related to having a license or certificate refused, revoked, suspended or restricted relating to unprofessional conduct until January 1, 2017, as amended by this act, the Board must not base a decision solely on the Board's finding that an applicant had a license refused or revoked after July 1, 2004.
- Requires the Board, at the request of an applicant, to conduct a de nova hearing concerning the conduct that constituted the grounds for the previous revocation or denial by the Board.

Task Force on Patient Consent and Documentation Best Practices (Task Force)

- Establishes the Task Force and outlines the membership and duties of the Task Force.
- Specifies that the Task Force may use the services and expertise of the staff of the Arizona Department of Health Services.
- Requires the Board to adopt the recommendations of the Task Force in its rules by March 31, 2015.
- Repeals this section from and after May 31, 2014.

Exemption from Rule Making

- Exempts the Board from rule making requirements until November 1, 2015.
- Requires the Board to allow interested parties to provide written comments or testimony on proposed rules to the Board and have the Board adequately address those comments.
- Mandates that the Board prepare a mailing list of persons who wish to be notified of public hearings relating to proposed rule changes and requires the Board to hold at least two public hearings on its proposed rules before adoption and the Board must testify before the Joint Legislative Budget Committee regarding the proposed rules.

Definitions and Miscellaneous

- Defines the terms *direct client contact*, *equivalent*, *indirect client service*, *psychoeducation* and adds to the definition of *psychotherapy*.
- Makes technical, conforming and clarifying changes.

Amendments

Committee on Health

- Adds clarifying language regarding an applicant who wishes to withdraw an application for licensure.
- Clarifies that the Board must make the investigative file available to the licensee or their representative, when they are the subject of an investigation.
- Specifies that the Board by rule may prescribe the number of hours required for functions related to direct client contact and indirect client service as it relates to the four professions.
- Clarifies language in the Factors for Review section that allows, rather than requires, the Board, if requested by the applicant to not base a decision solely on a finding that an applicant had a license refused on the grounds of unprofessional conduct or a license revoked as a result of a final order of the Board that was not the result of a consent agreement or surrender of a license after July 1, 2004.

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- Specifies the Board may conduct a de novo hearing and consider evidence presented at the time of the original denial or revocation or any new evidence presented on behalf of the applicant.
- Adds two members to the Task Force.
- Makes technical, conforming and clarifying changes.
- Modifies the definition of *Indirect Client Service*.